SENATE BILL NO. 5

January 12, 2023, Introduced by Senators CAMILLERI, CHERRY, IRWIN, MOSS, GEISS, WOJNO, POLEHANKI, MCDONALD RIVET, HERTEL, MCMORROW, CAVANAGH, CHANG, BAYER, MCCANN, SANTANA, KLINEFELT, SINGH, SHINK, BRINKS and ANTHONY and referred to the Committee on Labor.

A bill to amend 1947 PA 336, entitled
"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"
by amending sections 9, 10, and 15 (MCL 423.209, 423.210, and 423.215), as amended by 2014 PA 414.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:
Sec. 9. (1) Public employees may do any of the following:
(a) Organize or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.
(b) Refrain from any or all of the activities identified in subdivision (a).
(2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following:
(a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.
(b) Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
(c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.
(d) Pay the costs of an independent examiner verification as described in section 10(9).
(3) A person who violates subsection (2) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in
Sec. 10. (1) A public employer or an officer or agent of a public employer shall not do any of the following:

(a) Interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section 9.

(b) Initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization. A public school employer's use of public school resources to assist a labor organization in collecting dues or service fees from wages of public school employees is a prohibited contribution to the administration of a labor organization. However, a public school employer's collection of dues or service fees pursuant to a collective bargaining agreement that is in effect on March 16, 2012 is not prohibited until the agreement expires or is terminated, extended, or renewed. A public employer may permit employees to confer with a labor organization during working hours without loss of time or pay.

(c) Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization. However, this act or any other law of this state does not preclude a public employer from making an agreement with an exclusive bargaining representative as described in section 11 to require as a condition of employment that all other employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(d) Discriminate against a public employee because he or she has given testimony or instituted proceedings under this act.

(e) Refuse to bargain collectively with the representatives of
(2) It is the purpose of 1973 PA 25 to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if the requirement is negotiated with the public employer, that all other employees in the bargaining unit share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee that may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

(3) A labor organization or its agents shall not do any of the following:

(a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, provided if it is the representative of the public employer’s employees, subject to section 11.

(3) Except as provided in subsection (4), an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following:

(a) Refrain or resign from membership in, voluntary
affiliation with, or voluntary financial support of a labor
organization or bargaining representative.

(b) Become or remain a member of a labor organization or
bargaining representative.

(c) Pay any dues, fees, assessments, or other charges or
expenses of any kind or amount, or provide anything of value to a
labor organization or bargaining representative.

(d) Pay to any charitable organization or third party any
amount that is in lieu of, equivalent to, or any portion of dues,
fees, assessments, or other charges or expenses required of members
of or public employees represented by a labor organization or
bargaining representative.

(4) The application of subsection (3) is subject to the
following:

(a) Subsection (3) does not apply to any of the following:

(i) A public police or fire department employee or any person
who seeks to become employed as a public police or fire department
employee as that term is defined under section 2 of 1969 PA 312,
MCL 423.232.

(ii) A state police trooper or sergeant who is granted rights
under section 5 of article XI of the state constitution of 1963 or
any individual who seeks to become employed as a state police
trooper or sergeant.

(b) Any person described in subdivision (a), or a labor
organization or bargaining representative representing persons
described in subdivision (a) and a public employer or this state
may agree that all employees in the bargaining unit shall share
fairly in the financial support of the labor organization or their
exclusive bargaining representative by paying a fee to the labor
organization or exclusive bargaining representative that may be
equivalent to the amount of dues uniformly required of members of
the labor organization or exclusive bargaining representative.
Section 9(2) shall not be construed to interfere with the right of
a public employer or this state and a labor organization or
bargaining representative to enter into or lawfully administer such
an agreement as it relates to the employees or persons described in
subsection (a).

(e) If any of the exclusions in subdivision (a)(i) or (ii) are
found to be invalid by a court, the following apply:

(i) The individuals described in the exclusion found to be
invalid shall no longer be excepted from the application of
subsection (3).

(ii) Subdivision (b) does not apply to individuals described in
the invalid exclusion.

(5) An agreement, contract, understanding, or practice between
or involving a public employer, labor organization, or bargaining
representative that violates subsection (3) is unlawful and
unenforceable. This subsection applies only to an agreement,
contract, understanding, or practice that takes effect or is
extended or renewed after March 28, 2013.

(6) The court of appeals has exclusive original jurisdiction
over any action challenging the validity of subsection (3), (4), or
(5). The court of appeals shall hear the action in an expedited
manner.

(7) For fiscal year 2012-2013, $1,000,000.00 is appropriated
to the department of licensing and regulatory affairs to be
expended to do all of the following regarding 2012 PA 349:

(a) Respond to public inquiries regarding 2012 PA 349.
(b) Provide the commission with sufficient staff and other resources to implement 2012 PA 349.

c) Inform public employers, public employees, and labor organizations concerning their rights and responsibilities under 2012 PA 349.

d) Any other purposes that the director of the department of licensing and regulatory affairs determines in his or her discretion are necessary to implement 2012 PA 349.

(8) A person, public employer, or labor organization that violates subsection (3) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

(4)(9) By July 1 of each year, each exclusive bargaining representative that represents public employees in this state shall have an independent examiner verify the exclusive bargaining representative's calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year and shall file that verification with the commission. The commission shall make the exclusive bargaining representative's calculations available to the public on the commission's website. The exclusive bargaining representative shall also file a declaration identifying the local bargaining units that are represented. Local bargaining units identified in the declaration filed by the exclusive bargaining representative are not required to file a separate calculation of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment. For fiscal year 2011-2012, $100,000.00 is appropriated to the commission for the
costs of implementing this subsection. For fiscal year 2014-2015, $100,000.00 is appropriated to the commission for the costs of implementing this subsection.

(10) Except for actions required to be brought under subsection (6), a person who suffers an injury as a result of a violation or threatened violation of subsection (3) may bring a civil action for damages, injunctive relief, or both. In addition, a court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection. Remedies provided in this subsection are independent of and in addition to other penalties and remedies prescribed by this act.

Sec. 15. (1) A public employer shall bargain collectively with the representatives of its employees as described in section 11 and may make and enter into collective bargaining agreements with those representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession.

(2) A public school employer has the responsibility, authority, and right to manage and direct on behalf of the public the operations and activities of the public schools under its control.

(3) Collective bargaining between a public school employer and
a bargaining representative of its employees shall not include any of the following subjects:

(a) Who is or will be the policyholder of an employee group insurance benefit. This subdivision does not affect the duty to bargain with respect to types and levels of benefits and coverages for employee group insurance. A change or proposed change in a type or to a level of benefit, policy specification, or coverage for employee group insurance shall be bargained by the public school employer and the bargaining representative before the change may take effect.

(b) Establishment of the starting day for the school year and of the amount of pupil contact time required to receive full state school aid under section 1284 of the revised school code, 1976 PA 451, MCL 380.1284, and under section 101 of the state school aid act of 1979, 1979 PA 94, MCL 388.1701.

(c) The composition of school improvement committees established under section 1277 of the revised school code, 1976 PA 451, MCL 380.1277.

(d) The decision of whether or not to provide or allow interdistrict or intradistrict open enrollment opportunity in a school district or the selection of grade levels or schools in which to allow an open enrollment opportunity.

(e) The decision of whether or not to act as an authorizing body to grant a contract to organize and operate 1 or more public school academies under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(f) The decision of whether or not to contract with a third party for 1 or more noninstructional support services; or the procedures for obtaining the contract for noninstructional support.
services other than bidding described in this subdivision; or the
identity of the third party; or the impact of the contract for
noninstructional support services on individual employees or the
bargaining unit. However, this subdivision applies only if the
bargaining unit that is providing the noninstructional support
services is given an opportunity to bid on the contract for the
noninstructional support services on an equal basis as other
bidders.

(g) The use of volunteers in providing services at its
schools.

(h) Decisions concerning use and staffing of experimental or
pilot programs and decisions concerning use of technology to
deliver educational programs and services and staffing to provide
that technology, or the impact of those decisions on individual
employees or the bargaining unit.

(i) Any compensation or additional work assignment intended to
reimburse an employee for or allow an employee to recover any
monetary penalty imposed under this act.

(j) Any decision made by the public school employer regarding
teacher placement, or the impact of that decision on an individual
employee or the bargaining unit.

(k) Decisions about the development, content, standards,
procedures, adoption, and implementation of the public school
employer's policies regarding personnel decisions when conducting a
staffing or program reduction or any other personnel determination
resulting in the elimination of a position, when conducting a
recall from a staffing or program reduction or any other personnel
determination resulting in the elimination of a position, or in
hiring after a staffing or program reduction or any other personnel
determination resulting in the elimination of a position, as provided under section 1248 of the revised school code, 1976 PA 451, MCL 380.1248, any decision made by the public school employer pursuant to those policies, or the impact of those decisions on an individual employee or the bargaining unit.

(i) Decisions about the development, content, standards, procedures, adoption, and implementation of a public school employer's performance evaluation system adopted under section 1249 of the revised school code, 1976 PA 451, MCL 380.1249, or under 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the content of a performance evaluation of an employee under those provisions of law, or the impact of those decisions on an individual employee or the bargaining unit.

(m) For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee, decisions concerning the discharge or discipline of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit. For public employees whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, a public school employer shall not adopt, implement, or maintain a policy for discharge or discipline of an employee that includes a standard for discharge or discipline that is different than the arbitrary and capricious standard provided under section 1 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.

(n) Decisions about the format, timing, or number of classroom observations conducted for the purposes of section 3a of article II of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the
classroom observation of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit.

(o) Decisions about the development, content, standards, procedures, adoption, and implementation of the method of compensation required under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions about how an employee performance evaluation is used to determine performance-based compensation under section 1250 of the revised school code, 1976 PA 451, MCL 380.1250, decisions concerning the performance-based compensation of an individual employee, or the impact of those decisions on an individual employee or the bargaining unit.

(p) Decisions about the development, format, content, and procedures of the notification to parents and legal guardians required under section 1249a of the revised school code, 1976 PA 451, MCL 380.1249a.

(q) Any requirement that would violate section 10(3).

(4) Except as otherwise provided in subsection (3)(f), the matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees, and, for the purposes of this act, are within the sole authority of the public school employer to decide.

(5) If a public school is placed in the state school reform/redesign school district or is placed under a chief executive officer under section 1280c of the revised school code, 1976 PA 451, MCL 380.1280c, then, for the purposes of collective bargaining under this act, the state school reform/redesign officer or the chief executive officer, as applicable, is the public school employer of the public school employees of that public school for
as long as the public school is part of the state school
reform/redesign school district or operated by the chief executive
officer.

(6) A public school employer's collective bargaining duty
under this act and a collective bargaining agreement entered into
by a public school employer under this act are subject to all of
the following:

(a) Any effect on collective bargaining and any modification
of a collective bargaining agreement occurring under section 1280c
of the revised school code, 1976 PA 451, MCL 380.1280c.

(b) For a public school in which the superintendent of public
instruction implements 1 of the 4 school intervention models
described in section 1280c of the revised school code, 1976 PA 451,
MCL 380.1280c, if the school intervention model that is implemented
affects collective bargaining or requires modification of a
collective bargaining agreement, any effect on collective
bargaining and any modification of a collective bargaining
agreement under that school intervention model.

(5) (7)—Each collective bargaining agreement entered into
between a public employer and public employees under this act on or
after March 28, 2013 shall must include a provision that allows an
emergency manager appointed under the local financial stability and
choice act, 2012 PA 436, MCL 141.1541 to 141.1575, to reject,
modify, or terminate the collective bargaining agreement as
provided in the local financial stability and choice act, 2012 PA
436, MCL 141.1541 to 141.1575. Provisions required by this
subsection are prohibited subjects of bargaining under this act.

(6) (8)—Collective bargaining agreements under this act may be
rejected, modified, or terminated pursuant to the local financial
stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

This act does not confer a right to bargain that would infringe on
the exercise of powers under the local financial stability and
choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(7) A unit of local government that enters into a consent
agreement under the local financial stability and choice act, 2012
PA 436, MCL 141.1541 to 141.1575, is not subject to subsection (1)
for the term of the consent agreement, as provided in the local
financial stability and choice act, 2012 PA 436, MCL 141.1541 to
141.1575.

(8) If the charter of a city, village, or township with a
population of 500,000 or more requires and specifies the method of
selection of a retirant member of the municipality's fire
department, police department, or fire and police department
pension or retirement board, the inclusion of the retirant member
on the board and the method of selection of that retirant member
are prohibited subjects of collective bargaining, and any provision
in a collective bargaining agreement that purports to modify that
charter requirement is void and of no effect.

(9) The following are prohibited subjects of bargaining
and are at the sole discretion of the public employer:

(a) A decision as to whether or not the public employer will
enter into an intergovernmental agreement to consolidate 1 or more
functions or services, to jointly perform 1 or more functions or
services, or to otherwise collaborate regarding 1 or more functions
or services.

(b) The procedures for obtaining a contract for the transfer
of functions or responsibilities under an agreement described in
subdivision (a).
(c) The identities of any other parties to an agreement described in subdivision (a).

(10) Subsection (11)(9) does not relieve a public employer of any duty established by law to collectively bargain with its employees as to the effect of a contract described in subsection (11)(a)(9)(a) on its employees.

(11) An agreement with a collective bargaining unit shall not require a public employer to pay the costs of an independent examiner verification described in section 10(9). 10(4).

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.